

**BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE  
STATE OF MONTANA**

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IN THE MATTER OF THE INSURE	)	CASE NO. INS-2009-1
MONTANA RENEWAL APPLICATION	)	
DENIAL OF MILES CITY	)	<b>FINDINGS OF FACT,</b>
GREENHOUSE and JUSTIN DIGHANS,	)	<b>CONCLUSIONS OF LAW,</b>
	)	<b>FINAL AGENCY DECISION,</b>
Respondents.	)	<b>AND NOTICE OF</b>
	)	<b>OPPORTUNITY FOR</b>
	)	<b>JUDICIAL REVIEW</b>

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On December 9, 2008, Respondents requested a hearing on the Insurance Department's (Department) denial of Respondents' Insure Montana renewal application. On January 6, 2009, the Commissioner of Insurance (Commissioner) appointed Michael J. Reiley, Esq. hearing examiner, and pursuant to mailed notice, on Wednesday, January 14, 2009, the Commissioner conducted a contested case hearing in the above-referenced matter.

Michael J. Rieley, Esq. presided as the Hearing Examiner and the hearing was conducted pursuant to the contested case provisions of the Montana Administrative Procedure Act, Mont. Code Ann. § 2-4-601, *et seq.*

The hearing was conducted pursuant to the hearings and appeals provisions of the Montana Insurance Code (Mont. Code Ann. §§ 33-1-701, *et seq.*); the contested case provisions of the Montana Administrative Procedure Act (Mont. Code Ann. §§ 2-4-601 *et*

*seq.*); and Montana's statutory, public participation in governmental operations notice and hearing provisions (Mont. Code Ann. §§ 2-3-101, *et seq.*).

At the contested case hearing, Michael Winsor, Legal Counsel for the Montana State Auditor's Office, represented the Department. Justin Dighans did not appear, nor did any counsel appear on his behalf or on behalf of Miles City Greenhouse.

Testimony was received from Jill Sark, Director of the Insure Montana Program, and Darla Sautter, Legal Administrative Secretary, on behalf of the Department. The following document copies were offered by the Department without objection and received into evidence: Insure Montana's September 1, 2008, newsletter regarding Small Business Health Insurance Program's "Renewal Process Policy Changes in Effect" (Exhibit 1); Insure Montana's September 25, 2008, cover notice and renewal application form (Exhibit 2); Insure Montana's October 21, 2008, letter to Justin Dighans addressed to Miles City Greenhouse (Exhibit 3); Insure Montana's December 1, 2008, letter to Justin Dighans addressed to Miles City Greenhouse (Exhibit 4); Miles City Greenhouse's fax cover sheet and Insure Montana 2009 Renewal Application signed by Justin Dighans and undated (Exhibit 5); December 9, 2008, letter from Justin Dighans/Miles City Greenhouse to the Commissioner regarding "Insure MT group plan cancellation" (Exhibit 6); and a Certified Mail Receipt and green card (Exhibit 7).

The Hearing Examiner entered his Proposed Findings of Fact, Conclusions of Law, and Order on February 18, 2009, and served the parties with the same pursuant to Mont. Code Ann. § 2-4-621. On February 26, 2009, the Commissioner issued a Scheduling Order pursuant to Mont. Code Ann. § 2-4-621, and gave the parties until

March 18, 2009, to request oral argument, and to file exceptions with supporting briefs to the Hearing Examiner's Proposed Findings of Fact, Conclusions of Law, and Order.

Now therefore, having reviewed and considered the complete record in these proceedings, there being no exceptions, supporting briefs, or requests for oral argument filed by either party pursuant to the Scheduling Order, the State Auditor and Commissioner of Insurance, pursuant to Mont. Code Ann. § 2-4-621, hereby adopts the Hearing Examiner's Proposed Findings of Fact, Conclusions of Law and Order as follows:

### **FINDINGS OF FACT**

1. Jill Sark (Sark), Director of the Insure Montana Program for the Department of Insurance for the Montana State Auditor and Insurance Commissioner, testified that Justin Dighans (Dighans) is the business owner, as well as an employee, of the Miles City Greenhouse, which was a participating business in the Insure Montana Program, under which its employees received business incentive and employee assistance payments. (Tr. 3)

2. Sark testified that on September 25, 2008, a renewal application, together with a cover letter, was sent to participating businesses. The renewal application contains the following underlined statement.

If this Employee Renewal Application form is not received by October 31, 2008, you will no longer qualify for the Insure Montana program and you will be required to reapply for the program for future assistance.

(Tr. 3, 5, 6; Exh. 2.)

3. Sark testified that in the first week of September, a newsletter dated September 1, 2008, was sent to businesses informing them of the October 31<sup>st</sup> deadline and the program's adherence to that statutory renewal deadline. (Tr. 4; Exh. 1.)

4. Sark testified that on October 21, 2008, a warning notice went to all businesses and employees that had not submitted renewal applications. (Tr. 6; Exh. 3.)

5. Sark testified that on October 28, 2008, the employees of Miles City Greenhouse submitted their employee portion of the renewal application via fax, which included an employee renewal application for Dighans. (Tr. 7, 9.) However, the business itself did not submit its business renewal application until November 10, 2008. (Tr. 7-9; Exh. 5.) Sark further testified that although the fax contains an August 12, 2007, date in the upper left corner date, the Department's stamped receipt date is November 10, 2008. (Tr. 8; Exh. 5.)

6. Sark testified that a fax was received from Dighans' insurance agent asking for reinstatement into the program "based on the fact that a portion of his paperwork was received by October 30<sup>th</sup>" and that "[h]is intent was to have sent all of the required paperwork on October 30<sup>th</sup>". (Tr. 9; Exh. 6.) Accompanying the December 9, 2008, fax was a letter from Dighans also dated December 9, 2008, asking for reinstatement on the same basis. (Exh. 6.)

7. Darla Sautter (Sautter), Legal Assistant for the Department, testified that the "Certificate of Service" on the last page of the Notice of Hearing on Denial of Renewal Application in this matter was signed by her (Sautter), and identified a green Certified Mail Receipt card for article number 7007 1490 0005 0571 7463 addressed to "Justin Dighans, Miles City Greenhouse: at 2626 Valley Dr. E, Miles City, MT, 59301, which

also contains a “Justin Dighans” delivery signature and a “1/9/09” date of delivery. (Tr. 10-11; Exh. 7.) Both the card and the Certified Mail Receipt are the same, article number 7007 1490 0005 0571 7463. (Exh. 7.)

From the forgoing findings of fact, the Commissioner makes the following:

### **CONCLUSIONS OF LAW**

1. According to Mont. Code Ann. § 2-15-1903, the State Auditor is the Commissioner of Insurance (Commissioner).
2. The Commissioner has jurisdiction over this matter pursuant to Mont. Code Ann. § 33-1-311. Mont. Code Ann. § 33-1-311, requires the Commissioner to enforce the applicable provisions of the insurance laws of this state. Under Mont. Code Ann. § 33-1-311(3), the Commissioner has a duty to “ensure that the interests of consumers are protected: and under Mont. Code Ann. § 33-1-311(2), has authority as may be reasonably implied by the Insurance Code provisions.
3. For the Small Business Health Insurance Purchasing Pool (Insure Montana program) “[a]n eligible small employer may submit a new application for the premium incentive payments and premium assistance payments or the tax credit anytime during the year, but in order to maintain the employer’s registration for the next year, the registration application must be renewed each year.” Mont. Code Ann. § 33-22-2008(b).
4. The Commissioner is statutorily required to “begin accepting renewal applications on October 1 of each year and stop receiving renewal applications on October 31 of each year” for the Small Business Health Insurance Purchasing Pool. Mont. Code Ann. § 33-22-2008(c).

5. Because of the mandatory language contained in Mont. Code Ann. § 33-22-2008(c), and since there are no exceptions, the Commissioner has no discretion to accept Small Business Health Insurance Purchasing Pool (Insure Montana) renewal applications subsequent to October 31<sup>st</sup> of each year.

6. Service of Process for the Department's January 6, 2009, "Notice of Hearing on Denial of Renewal Application" to Respondents in this matter was legally effectuated by mail in accordance with Mont. Code Ann. § 33-1-314.

7. Despite several notifications, Dighans failed to submit a complete renewal application for the Insure Montana Small Business Health Insurance Program to the Department for his Miles City Greenhouse business before the requisite, statutorily mandated, deadline of October 31, 2008.

8. The evidence underlying the findings indicates that the Department complied with Mont. Code Ann. § 33-22-2008(c), by denying Respondent's renewal application.

From the foregoing Findings of Fact and Conclusions of Law, the Commissioner issues the following:

#### **FINAL AGENCY DECISION**

The Department's denial of the Insure Montana renewal application for Justin Dighans and the Miles City Greenhouse is hereby AFFIRMED. The Respondents may reapply at any time.

#### **NOTICE OF OPPORTUNITY FOR JUDICIAL REVIEW**

Respondents are hereby notified that they have the right to request judicial review of this Final Agency Decision by filing a petition for judicial review within 30 days of service of this Final Agency Decision with the Montana First Judicial District Court in

and for the County of Lewis and Clark, Montana, as provided in Mont. Code Ann. §§ 2-4-702 and 33-1-711.

DATED this 31<sup>st</sup> day of March, 2009.

MONICA J. LINDEEN  
State Auditor and Commissioner of Insurance

By: Robert W Moon  
ROBERT W. MOON  
Deputy Commissioner of Insurance

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 31 day of ~~February~~ <sup>MARCH</sup>, 2009, a true and correct copy of the foregoing Scheduling Order was served upon the following by depositing the same in the United States mail post paid and addressed as follows, to wit:

Justin Dighans  
Miles City Greenhouse  
2626 Valley Dr. E.  
Miles City, MT 59301

Michael Winsor  
Department of Insurance

Darla Sautter  
Darla Sautter, Legal Administrative Secretary  
State Auditor's Office